

AMENDED IN SENATE SEPTEMBER 8, 2003

AMENDED IN SENATE JULY 10, 2003

AMENDED IN ASSEMBLY APRIL 8, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1239

Introduced by Assembly Member Wiggins
(Principal coauthor: Senator Dunn)

February 21, 2003

~~An act to amend Section 33561 of the Financial Code, and to add Section 23038.8 to the Revenue and Taxation Code, relating to payment instruments. An act to add Part 13.5 (commencing with Section 30500) to Division 2 of the Revenue and Taxation Code, relating to cigarette taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1239, as amended, Wiggins. ~~Trusts; payment instruments and taxation~~ Cigarette taxation: fees.

Existing law imposes various fees for the conduct of business in the state and imposes specified taxes on cigarettes and tobacco products.

The Cigarette and Tobacco Products Tax Law imposes a tax on every distributor of cigarettes and tobacco products at specified rates, including additional taxes imposed under the Tobacco Tax and Health Protection Act of 1988 (Proposition 99), and the California Families and Children Act of 1998 (Proposition 10).

Under existing law, states' attorneys general and various tobacco product manufacturers have entered into a Master Settlement Agreement (MSA), in settlement of various lawsuits, that provides for

the allocation of money to the states and certain territories. The state has entered into a memorandum of understanding providing for the allocation of the state's share of moneys to be received under the MSA between the state and counties and certain cities in the state. Existing law requires any tobacco product manufacturer that sells cigarettes to consumers in California and does not participate in the MSA to place specified amounts into a qualified escrow fund by April 15 of each year.

This bill would, on and after January 1, 2004, impose a fee, to be determined by the State Department of Health Services as prescribed, on specified tobacco product manufacturers who did not sign the MSA.

The bill would create the Nonparticipating Tobacco Manufacturer Mitigation Trust Fund, to receive moneys derived from the imposition of the fee. Upon appropriation by the Legislature, the money in the fund would be expended to reimburse the board for costs incurred in administering the fee and to fund purposes related to tobacco-related health measures including the creation, expansion, and administration of smoking cessation programs.

~~(1) Existing law, the Payment Instruments Law, provides for the regulation and licensure of persons engaging in the business of selling payment instruments in this state. Existing law provides that a person licensed under the Payment Instrument Law is deemed to own an eligible security under specified conditions.~~

~~This bill would provide that a licensee would not be deemed not to own an eligible security when the eligible security is held in a business trust that is limited in purpose to paying the payment instruments issued by the licensee and the beneficial interest in the trust is solely owned by the licensee.~~

~~(2) Existing income and corporation tax laws treat trusts as taxable entities. In general, those laws require trusts to report their taxable income and, among other things, allow a deduction for specified expenses and for income included in gross income that is currently distributable to the beneficiaries of the trust. Those laws provide that a business trust may be taxable as a partnership or corporation, or, under certain circumstances, the separate existence of a business trust may be disregarded.~~

~~This bill would provide for purposes of those laws that the separate existence of a business trust holding an eligible security of the taxpayer pursuant to specified provisions of the Payment Instruments Law shall be disregarded, as provided.~~



Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. Section 33561 of the Financial Code is amended~~

SECTION 1. Part 13.5 (commencing with Section 30500) is
added to Division 2 of the Revenue and Taxation Code, to read:

PART 13.5. CIGARETTE FEE

CHAPTER 1. GENERAL PROVISIONS

30500. It is the intent of the Legislature to impose regulatory
fees pursuant to this part within the limitation approved by the
court in *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15
Cal.4th 866.

30501. For purposes of this part, the following definitions
apply:

(a) "Board" means the State Board of Equalization.

(b) "Department" means the State Department of Health
Services.

(c) "Fund" means the Nonparticipating Tobacco
Manufacturer Mitigation Trust Fund created by Section 30513.

(d) "Manufacturer" or "nonparticipating manufacturer"
means a tobacco product manufacturer that did not sign the
Master Settlement Agreement, as defined in subdivision (e) of
Section 104556 of the Health and Safety Code.

(e) "Tobacco product" means cigarettes.

30502. The Legislature declares that the purposes of the fee
imposed by this article are to help promote and fund the purposes
of Section 104555 of the Health and Safety Code, especially the
creation, expansion, and administration of programs for the
cessation of smoking.

CHAPTER 2. CIGARETTE FEE

30505. (a) On and after July 1, 2004, each nonparticipating
manufacturer currently manufacturing tobacco products, or who
has previously manufactured tobacco products, or both, that have

1 *contributed or currently contribute, or both, to tobacco-related*
2 *health impacts shall pay a fee as set forth in this part.*

3 *(b) On or before July 1, 2004, the department shall set the fee*
4 *for each nonparticipating manufacturer at the rate of twenty-five*
5 *mills (\$0.025) for each cigarette sold, based on 2002–03 fiscal*
6 *years sales, by that nonparticipating manufacturer.*

7 *(c) On or before July 1, 2005, for the 2004–05 fiscal year, and*
8 *every fiscal year thereafter, the department shall determine a fee*
9 *rate to be assessed on a nonparticipating manufacturer described*
10 *in subdivision (a) that it estimates will produce sufficient revenue*
11 *to fund that manufacturer's proportionate share of the current*
12 *year's costs for the creation, expansion, and administration of*
13 *smoking cessation programs based on the following factors:*

14 *(1) The total annual cost to the state and local governments to*
15 *fund the creation, expansion, and administration of smoking*
16 *cessation programs.*

17 *(2) The nonparticipating manufacturer's share of the*
18 *California tobacco products market as determined by the*
19 *department.*

20 *(3) The costs incurred by the board in administering the fee.*

21
22 *CHAPTER 3. FEE ADMINISTRATION*
23

24 *30507. (a) The board shall administer and annually collect*
25 *the fee imposed pursuant to Section 30505 in accordance with the*
26 *Fee Collection Procedures Law (Part 30 (commencing with*
27 *Section 55001) of Division 2).*

28 *(b) The board shall assess the fee imposed pursuant to Section*
29 *30505 commencing July 1, 2004, and annually on July 1 thereafter.*

30 *(c) The fee shall be deposited in the Nonparticipating Tobacco*
31 *Manufacturer Mitigation Trust Fund established pursuant to*
32 *Section 30513.*

33 *30508. Upon collection of the fee required by Section 30505*
34 *from a nonparticipating manufacturer, the board shall issue a*
35 *certificate to that manufacturer. The manufacturer shall present*
36 *the certificate to the distributor to prove payment of the fee prior*
37 *to receiving stamps on its packages of cigarettes. The distributor*
38 *may not affix a stamp to a package of cigarettes of a*
39 *nonparticipating manufacturer without this proof. This section*
40 *may not be construed to affect the state tax liability of a cigarette*

1 distributor or any determination of whether that liability has been
2 paid.

3 30509. The board shall adopt appropriate regulations and
4 policies to implement this part.

5 30510. No fee may be assessed pursuant to this section upon
6 any nonparticipating manufacturer that can demonstrate, as
7 determined by the department, that his or her business did not
8 contribute in any manner to tobacco-related health impacts.

9 30511. Fees imposed pursuant to this chapter are not
10 deductible as ordinary business expenses or as any other
11 classification of expenses or costs under the Personal Income Tax
12 Law (Part 10 (commencing with Section 17001)) or the
13 Corporation Tax Law (Part 11 (commencing with Section 23001)).
14

15 CHAPTER 3. FEE ALLOCATION
16

17 30513. There is hereby created the Nonparticipating Tobacco
18 Manufacturer Mitigation Trust Fund in the State Treasury. Moneys
19 in the fund shall, upon appropriation by the Legislature, be
20 expended for the following purposes:

21 (a) To reimburse the board for the costs it incurs in
22 administering the fee created pursuant to Section 30505.

23 (b) To the department to address the tobacco-related health
24 impacts described in Section 104555 of the Health and Safety Code
25 including the creation, expansion, and administration of smoking
26 cessation programs.

27 to read:

28 ~~33561. (a) For purposes of this article, a licensee shall be~~
29 ~~deemed to own an eligible security only if:~~

30 ~~(1) The licensee owns the eligible security solely and~~
31 ~~exclusively in the licensee's own right, both of record and~~
32 ~~beneficially;~~

33 ~~(2) The eligible security is not subject to any pledge, lien, or~~
34 ~~security interest; and~~

35 ~~(3) The licensee can freely negotiate, assign, or otherwise~~
36 ~~transfer the eligible security.~~

37 ~~(b) Notwithstanding the provisions of subdivision (a), no~~
38 ~~licensee shall be deemed not to own an eligible security solely on~~
39 ~~account of any of the following facts, provided that, but for the~~

1 fact, the licensee would be deemed to own the eligible security
2 under the provisions of subdivision (a):

3 (1) The fact that the eligible security is owned of record by a
4 documented nominee of the licensee or by a securities depository
5 which is licensed under, or exempt from licensing under, Division
6 14 (commencing with Section 30000), or the eligible security is
7 held in a business trust that is limited in purpose to paying the
8 payment instruments issued by the licensee and the beneficial
9 interest in the trust is solely owned by the licensee.

10 (2) The fact that the licensee has pledged the eligible security
11 with the United States or any state of the United States to secure
12 payment by the licensee of payment instruments issued by the
13 licensee.

14 SEC. 2.— Section 23038.8 is added to the Revenue and Taxation
15 Code, to read:

16 23038.8. Notwithstanding any other provision of law,
17 including subdivision (b) of Section 23038, for purposes of Part
18 10 (commencing with Section 17001), Part 10.2 (commencing
19 with Section 18401), and Part 11 (commencing with Section
20 23001), the separate existence of a business trust holding an
21 eligible security of the taxpayer pursuant to Section 33561 of the
22 Financial Code shall be disregarded, and all activities, assets, and
23 liabilities, as well as items of income, deduction, and credit of the
24 trust, shall be treated as activities (including activities for purposes
25 of Section 23101), assets, liabilities, and those items, as the case
26 may be, of the taxpayer that is the sole owner of the beneficial
27 interest in the business of the trust pursuant to Section 33561 of the
28 Financial Code.